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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 62.

UNITED STATES OF AMERICA, Appellant

v.

CHARLES RESNICK and JOSEPH RESNICK, Partners, Trading as L. RESNICK AND SONS.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR APPELLEES.

SAMUEL L. EINHORN,
Attorney.

OCTOBER 1936.

ALLEN, LANE & SCOTT, PRS. PHILADELPHIA.

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CITATIONS.

CASES:

U. S. of America, Appellant *v.* The Acme Can Company, October Term 1936, No. 63 3

STATUTES:

Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C., Title 18, sec. 682) 2

MISCELLANEOUS:

Rules of the Supreme Court
Rule 12 2

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v.

Charles Resnick and Joseph Resnick, Partners, Trading as L. Resnick and Sons.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR APPELLEES.

OPINION BELOW.

The opinion of the District Court appears at R. 4-7 and has not yet been reported.

JURISDICTION.

The decision of the District Court sustaining the demurrer to the indictment was entered on March 11,

1936 (R. 7). The appeal to this Court was applied for and allowed on April 14, 1936 (R. 7 and 8). The statutory provision relied on by Appellant to sustain the jurisdiction of this Court is the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C., Title 18, sec. 682), and under Section 238 of the Judicial Code as amended by Act of February 13, 1925 (U. S. C., Title 28, sec. 345). On April 24, 1936, Appellees filed their statement against the jurisdiction, pursuant to Rule 12, par. 3 of this Court. On June 1, 1936, this Court postponed further consideration of the question of its jurisdiction in this case to the hearing of the case on its merits.

QUESTIONS PRESENTED.

1. Whether the action of the District Court on March 11, 1936, was a "decision or judgment * * * sustaining a demurrer" so that the Government's appeal taken on April 14, 1936, was beyond the thirty day period allowed.

2. Whether the manufacture and sale of two-quart metal hampers for fruits and vegetables are prohibited by the Standard Container Act of 1928.

3. If so, whether the provision of such Act as applied to the facts set forth in the indictment are constitutional.

STATUTES INVOLVED.

The Standard Container Act of 1928, c. 664, 45 Stat. 685 (U. S. C., Title 15, Secs. 257-257 (i)), together with the pertinent provisions of the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1245 (U. S. C., Title 18, Sec. 682), are printed in the Government's brief, Appendix A, pp. 35-41.

STATEMENT.

Appellees contend that the demurrer was sustained by the District Court on March 11, 1936 (R. 1 and R. 7). The issues in this case were framed upon the grounds set forth in Appellees' demurrer to the indictment (R. 3-4). However, the Court below did not in its opinion consider the Constitutionality or the intrastate character of the business. Appellees were not in custody nor were they under bond to appear at any time before or after April 14, 1936, when the District Court purported to discharge them (R. 7).

DISCUSSION.

As this case presents the identical questions involved in United States of America, Appellant *v.* The Acme Can Company, No. 63, October Term, 1936, which will be argued with the present case, the Court is respectfully referred to the brief in The Acme Can Company case for a discussion of the Appellees' contentions.

CONCLUSION.

For the reasons stated in the brief in The Acme Can Company case, it is respectfully submitted that the decision in the Court below should be affirmed.

SAMUEL L. EINHORN,
Attorney.

OCTOBER, 1936.